



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Paper No. 9

FLIESLER MEYER, LLP
FOUR EMBARCADERO CENTER
SUITE 400
SAN FRANCISCO CA 94111

COPY MAILED

FEB 09 2005

OFFICE OF PETITIONS

In re Patent No. 6,780,848	:	
Gluckman et al.	:	
Issue Date: August 24, 2004	:	DECISION ON REQUEST FOR
Application No. 09/910,461	:	RECONSIDERATION OF
Filed: July 20, 2001	:	PATENT TERM ADJUSTMENT
Attorney Docket No. 37522-1002C1	:	and
	:	NOTICE OF INTENT TO
	:	ISSUE CERTIFICATE OF
	:	CORRECTION
	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT," filed September 7, 2004. Patentees request that the patent term adjustment indicated in the patent be corrected from twenty-one (21) days to one hundred twenty-eight (128) days.

The request for reconsideration of the patent term adjustment indicated in the patent is **GRANTED**.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of one hundred twenty-eight (128) days.

On August 24, 2004, the above-identified application matured into U.S. Patent No. 6,780,848. The instant request for reconsideration filed September 7, 2004, was timely filed within 2 months of the date the patent issued. See § 1.705(d). The Patent issued with a revised Patent Term Adjustment of 21 days. The initial determination of PTA of 128 days was reduced by 107 days for the submission of a "Miscellaneous Incoming Letter" filed May 10, 2004. Patentees state that the papers filed included an Issue Fee Transmittal, a Change of Status and a Response to the examiner's reasons for allowance, all of which are specifically excluded from the provisions of 37 CFR 1.704(c)(10) and cannot be used to reduce the patentee term extension.

Patentees' arguments are well-taken. By Official Gazette Notice dated June 26, 2001, the Director has advised applicants and patentees that the filing after the mailing of a Notice of Allowance of either a response to the examiner's reasons for allowance, a change of address, or a loss of entitlement to small

entity status, will not be considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application and will not result in reduction of a patent term adjustment pursuant to 37 CFR 1.704(c)(10) *Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance*, 1247 OG 111 (June 26, 2001). A review of the application record reveals that the reduction of 120 days was based on the filing of such papers after allowance. Thus, it is concluded that the reduction of 120 days was incorrect.

In view thereof, the patent term adjustment indicated on the patent should have been one hundred twenty-eight **(128)** days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by ONE HUNDRED TWENTY-EIGHT (128) days.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

Karin A. Ferriter
per

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of DRAFT Certificate of Correction